ENERGY SOLUTIONS

November 1, 2010

Mr. Rusty Lundberg, Executive Secretary Utah Radiation Control Board 195 North 1950 West Salt Lake City, Utah 84116



Dear Mr. Lundberg:

Subject: Comments on Recommended Language for a Proposed Rule Requiring Performance
Assessments

Energy Solutions has reviewed the recommended language for a new proposed rule regarding the preparation of performance assessments as contained in the October 12, 2010 report of the Board performance assessment subcommittee. We hereby offer the following comments for your consideration.

Energy Solutions supports the idea of a rule to require a performance assessment to confirm that waste can be safely disposed at licensed sites. We agree with the subcommittee that this approach is far preferable to attempting to regulate disposal at licensed sites of individual waste streams. It is our understanding that the Board wishes by the passage of this rule to ensure that no waste is disposed in Utah that was not considered in the establishment of the limits on Class A waste as defined in the rules of the U.S. Nuclear Regulatory Commission given in 10 CFR 61.55(a) unless a site-specific analysis (or performance assessment) is prepared to confirm compliance with the performance objectives. Given that understanding, we propose that the revisions to R313-25-8 be reworded as follows (added language underlined – deleted language stricken out):

- (1) The licensee or applicant shall conduct a site-specific performance assessment and receive Executive Secretary approval prior to accepting any radioactive waste if:
- (a) the waste was not considered in the development of the limits on Class A waste and included in the analyses of the *Draft Environmental Impact Statement on 10 CFR Part 61* "Licensing Requirements for Land Disposal of Radioactive Waste," NUREG-0782, U.S. Nuclear Regulatory Commission, September 1981, and
 - (b) the waste to be disposed exceeds either of the following limits:
- (i) the waste is likely to result in greater than 10 percent of the dose limits in R313-25-19 during the time period at which peak dose would occur, or
- (ii) the waste will result in greater than 10 percent of the total site source term over the operational life of the facility, of
- (e)——for-any-other-reason, the disposal-of-the waste-would-result-in-an-unanalyzed condition.
 - (2)—A-licensoe-that-has-a-previously-approved-site-specific-performance-assessment-that addressed-a-radioactive-waste-for-which-a-site-specific-performance-assessment-would otherwise-be-required-under-R3-13-28-8(-1-)-shall-nofify-the-Executive-Secretary-of-the



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applicability-of-the-previously-approved-site-specific-performance-assessment-at-least-60-days prior-to-the-anticipated-acceptance-of-the-radioactive-waste-.

The draft proposed rule would require a new performance assessment if the waste results in an unanalyzed condition "...for any other reason." Energy *Solutions* believes the open-ended nature of this wording could lead to debates of the very nature the rule is intended to eliminate. Relying on a specific reference (the Part 61 EIS) to define what has not been analyzed is a more rigorous and sufficiently restrictive way to identify wastes requiring site-specific analysis.

We also believe it is important to change the order of the conditions proposed in the draft rule by first determining whether the waste stream was analyzed in the Part 61 EIS. As written, conditions (1)(a) and (1)(b) could be interpreted to require a performance assessment for wastes that meet the proposed thresholds even if the waste is not an otherwise unanalyzed waste stream. We believe the thresholds are an important element of the proposed rule; however, they should only apply for waste streams that already have been determined to be unanalyzed.

Energy Solutions also proposes that the language "and changing lake levels" be deleted from sections 4(a) and 4(d). The consideration of changing lake levels depends upon the waste to be analyzed and the associated period of performance to be considered. It is not necessarily relevant to a performance period that does not encompass the geologic time span within which the lake levels may or may not rise to the degree that the site will be affected. To require consideration of rising lake levels in every assessment will be at best a meaningless exercise for shorter performance periods and could add to the cost and time of performing such assessments. In any event, rising lake level potential is but one of dozens of such considerations that could be judged to be important. Any attempt to name all important facets of the technical analyses will not only fall short, but will also impose a level of micro-management of the Executive Secretary's discretion that exceeds that appropriate for a rule. The Executive Secretary will have ample opportunity to review the performance assessment against any criteria that is deemed to be important during the required review.

We thank you for the opportunity to provide these comments in advance of the publication of the proposed rule.

Sincerely.

Daniel B. Shrum

Senior Vice President Regulatory Affairs